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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,735	03/13/2007	Michael Powers	VEC-138-B (RUS0143)	5019
29296 7590 04/15/2009 JULIA CHURCH DIERKER DIERKER & ASSOCIATES, P.C. 3331 W. BIG BEAVER RD. SUITE 109 TROY, MI 48084-2813			EXAMINER ROSATI, BRANDON MICHAEL	
			ART UNIT 3744	PAPER NUMBER
			MAIL DATE 04/15/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/582,735

Applicant(s)

POWERS ET AL.

Examiner

BRANDON M. ROSATI

Art Unit

3744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/2/2009 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 10-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 10, lines 12-14 has been amended to recite that the tube forms a type gorge wherein the tank foot and gasket are received. However, it is not the tube which forms the gorge, it is the collar. None of the drawings or specification disclose having a tube alone without a collar forming a space for the gasket and tank foot.

Claims 11-14 are rejected as being dependent on independent claim 10.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 10-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. Claims 10-14 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. Claim 10, lines 12-14 require only a tube to form a type of gorge. It is unclear with respect to what other elements that the tube forms the gorge for the gasket and tank foot. The other element that defines the gorge is a missing essential element, which is needed to define the gorge.

Claims 11-14 are rejected as being dependent on independent claim 10.

Claim Rejections - 35 USC § 102

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
8. Claim 10 is rejected under 35 U.S.C. 102(b) as being anticipated by Puntambekar et al. (U.S. Patent No. 5,195,581).

Regarding claim 10, Puntambekar et al. disclose in Figures 1-3, a heat exchanger body part, a heat exchanger tank part (i.e. tank unit) (12), a header (20), a tube (14) extending from the heat exchanger body part and passing through a slot provided in the header pan, the header pan disposed at an end of the tube, having a flat surface, the header pan defining a collar (as seen in the Figure in the previous action) forming a ferrule adjacent to the tube, a tank foot at the end of the tank (i.e. parallel arms) (50 and 51), a gasket (i.e. adhesive material) (70), wherein the header pan is flat and the tube forms a gorge, wherein the gasket and tank foot are received (Column 2,

lines 23-55 and Column 3, lines 11-21). It is noted that although Puntambekar et al. does not specifically disclose the term a gasket, the adhesive as disclosed performs the same function as a gasket. It is further noted that the Examiner is interpreting the collar to be the area as indicated in the Figure below. It is also noted that the phrases “for a heat exchanger” and “for use in automotive applications” are statements of intended use at the header arrangement as shown can perform the functions.

Claim Rejections - 35 USC § 103

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Puntambekar et al. (U.S. Patent No. 5,195,581).

Regarding claim 11, Puntambekar et al. disclose a tube having a length that appears to be of less than or about twice the thickness of the header plus tank foot width of the header, but fails to disclose the exact dimensions of the tube or header. Although the exact dimensions are not given, it is obvious from Figure 2 that tube has a length of less than or about twice the thickness of the header plus tank foot width of the header. Furthermore, it is an obvious mechanical expedient to one of ordinary skill in the art to utilize a tube having a length of less than or about twice the thickness of the header plus tank foot width of the header because doing so will ensure a properly functioning tube as well as minimizes the amount of material needed to be used to maximize cost.

Regarding claim 12, Puntambekar et al. disclose the header pan (20) comprising at least one flat medallion. It is noted that since the header pan of Puntambekar is relatively flat, it

therefore has a flat medallion. Furthermore, because the Examiner is examining the final product (i.e. the header pan), the steps utilized to make the final product, such as pressing, which is referred to as a medallion are not given any patentable weight in an apparatus claim.

Regarding claim 13, Puntambekar et al. disclose the collar (as shown in the Figure above) inverted in relation to the line of extension of the tube.

Regarding claim 14, Puntambekar et al. disclose a gasket (70) which is essentially flat.

Response to Arguments

11. Applicant's arguments filed 1/28/2009 have been fully considered but they are not persuasive.

In response to applicant's arguments (page 6) that the 112 1st and 2nd paragraph rejections have been overcome is not persuasive. While these rejections appeared to be overcome in proposed amendment given to the Examiner for the purpose of the Telephonic interview (i.e. claims from 1/21/2009), the claims submitted on 1/28/2009, which are the claims submitted and used for the purpose of this examination, do not cure the deficiencies. Therefore, the applicant's arguments are unpersuasive and the rejection is maintained.

In response to applicant's arguments (page 6) that the reference does not teach a collar adjacent to the tube. In response to applicant's arguments, the examiner disagrees as Puntambekar et al. has a collar which is adjacent (i.e. next to) the tube (see Figure from previous Office Action). Therefore, the applicant's arguments are unpersuasive and the rejection is maintained.

In response to applicant's argument (page 6) that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e.,

stiffening characteristics) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Therefore, the applicant's arguments are unpersuasive and the rejection is maintained.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDON M. ROSATI whose telephone number is (571)270-3536. The examiner can normally be reached on Monday-Friday 8:00am- 4:30pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler or Frantz Jules can be reached on (571) 272-4834 or (571) 272-6681. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BMR
4/7/2009

/Cheryl J. Tyler/
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